IN THE HIGH COURT OF JUDICATUE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 272/2007

Shankar Ishwar Shinde ..vs.. Pandurang M. Chowke and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Courts or Judge's Orders.

CORAM : Smt. Vasanti A. Naik, J.
Dated : 12/09/2007

Heard Mr. Kotwal, learned counsel for the appellant.

The appellant is the original defendant No.2. A suit was filed by the plaintiffs for partition and separate possession of his share in the suit property. It was the case of the plaintiffs that defendant No.1, who was the father of plaintiff Nos. 1, 2, 3, 5 to 8 had executed registered sale deed of suit property in the year 1990 in favour of defendant No.2 . It was the case of the plaintiffs that the suit property was an ancestral property of the plaintiffs and defendant No.1 had no right to dispose of the entire property in favour of defendant No.2. It was the case of the plaintiffs that there was no partition of the suit property prior to the execution of the sale deed by defendant No.1 in favour of defendant No.2 and also before the institution of the suit.

Defendant No.2 contested the suit and pleaded that the property sold by defendant No.1 in favour of defendant No.2 was self acquired property of the defendant No.1. It was further pleaded that the property was sold to defendant No.2 in the year 1990 and the suit was instituted in the year 1995 and the suit was clearly barred by limitation.

The trial Court framed the necessary issues and held that the plaintiffs had succeeded in proving that the sale deed executed by defendant No.1 in favour of defendant No.2 was not binding on them so far as their share in the property was concerned. The trial Court further held that the plaintiffs failed to prove they were entitled to 8/9th share in the suit property by way of partition and in fact, the plaintiff Nos. 1 to 3 were entitled to 1/4th share each in the suit property and defendant No.2 was entitled to retain the share of defendant No.1. The Court held that the suit property was not self acquired property of defendant No. 1, but was ancestral property of the plaintiffs. The Court subsequently decreed the suit for partition and separate possession of 1/4th share each of plaintiff Nos. 1 to 3 and defendant No.2. The Court further dismissed the claim of plaintiff Nos. 4 to 8.

Defendant No. 2 preferred an appeal against the judgment and decree passed by the Trial Court on 9/11/2000. The first Appellate Court, however, on re-

appreciating the evidence on record held that the trial Court was justified in holding that the suit property was the ancestral property of the plaintiffs, the suit was not barred by the provisions of the Limitation Act and plaintiff Nos. 1 to 3 were entitled to 1/4th share each in the suit property. The appeal filed by defendant No.2 was dismissed with costs. The present appeal is preferred by the appellant/defendant No.2 against the judgment passed by the trial and the first Appellate Court.

The findings recorded by the Courts are pure findings of fact, which do not give rise to any substantial questions of law. The Courts concurrently held that the suit property was the ancestral property of the plaintiffs and the suit filed by the plaintiffs was not barred by limitation. The Courts further rightly held that plaintiff Nos.1 to 3 were entitled to 1/4th share each in the suit property and the sale deed executed by defendant No.1 in favour of defendant No. 2 was void and inoperative so far as the shares of plaintiff Nos. 1 to 3 were concerned. No fault can be found with the findings recorded by the Courts.

For the reasons aforesaid, the second appeal is dismissed with no order as to costs.

JUDGE

JSA.